power to change the maritime law must exist, otherwise we would be bound forever by immutable rules of ancient law. But whether this power resides in Congress or in the body which can change the Constitution is another question. Can the mere declaration of an intent to save rights and remedies of a certain specified sort be construed to authorize state legislatures to create, and state courts to enforce, a new remedy already held to work material prejudice to the characteristic features of the maritime law and unknown to it? If such a law by its very nature necessitates the trial of such suits in state tribunals only, there is certainly interference with the jurisdiction of the federal courts given them by the Constitution.

The Howell, if carried to its logical conclusion, wipes out immediately all remedies granted to sailors by Congress,[21] including those under the Seaman's Act,[22] together with his maritime right to care and cure and return.[23] This can hardly be said to be in accord with the policy of recent legislation, which has been to protect seamen's interests.

On the other hand the Rhode case raises new difficulties. Since the obligation arising under the workmen's compensation act is entirely distinct from that arising under the maritime law, if both remedies are available to an injured employee, the shipowner will be liable for double damages,[24] at least he will have paid his insurance premium for no consideration. Is this due process of law?

Probably the only solution of the difficulty is the enactment by Congress of a federal workmen's compensation act. This would require a redrafting of the present confused body of rules relating to seamen, legislation which is badly needed. But if uniformity is the essential requisite of our system of maritime law, Congress must go further, for uniformity can be obtained only by the adoption of a complete maritime code independent of the rules of the various states. Congress should make its enforcement exclusive in the federal courts, saving no common law remedies, and denying all jurisdiction to the state courts in matters of admiralty and maritime nature.

G. H.

BILLS AND NOTES: NEGOTIABILITY: "STATEMENT OF THE TRANSACTION WHICH GIVES RISE TO THE INSTRUMENT."—A bank gave a negotiable certificate of deposit for $5000, due in one year, to a church building committee, and with it as security the latter were able to borrow the cash from an insurance company. In return for the bank's obligation, the committee made out their promissory note to the bank's order, for the same amount and due

[21] U. S. Rev. Stats., §§ 4501-4613; Navigation Laws of the United States, pp. 59 et seq.

[22] Act of March 4, 1915, ch. 153, 37 U. S. Stats. at L. 1134.

[23] The Osceola (1903) 189 U. S. 158, 47 L. Ed. 760, 23 Sup. Ct. Rep. 483.

[24] State v. Daggett (1915) 87 Wash. 253, 151 Pac. 648, and note in 4 California Law Review, 234.

on the same day as the certificate of deposit. On the margin at the top, on the face of this note, appeared the following clause: "This note was given to reimburse the German Bank for Cert. of Deposit No. 1187 for $5000, due April 17, 1915." An indorsee for value brought suit against the committee on the note. The committee had repaid the loan and got back the certificate of deposit, which it offered to surrender. These were the facts in the Alabama case of *Sacred Heart Church Building Committee et al. v. Manson.*[1] A majority of the court held the note non-negotiable and gave judgment for the defendant building committee on the ground that the use of the word "reimburse" in the clause on the margin of the note had the effect of making the committee's promise to pay conditional on the bank being called upon to meet the certificate of deposit when due, since the bank could only be reimbursed after it had actually paid out something.

If the clause in the note was merely a "statement of the transaction which gives rise to the instrument," the note would be negotiable under the Uniform Negotiable Instruments Law.[2] The trouble is, there is no provision in the act for determining just what is a "statement of the transaction." In this respect it appears to be indefinite and incomplete. It is interesting to note that Dean Ames early commented upon this omission in his criticism of the act.[3]

This means that courts are left to their own view of each particular case in determining the negotiability of instruments under this provision.[4] Thus a note, negotiable in form, and containing what appears to be simply a notation of the transaction which gave rise to its issue, may be sued upon in a court of law and held non-negotiable. The practical result is that no one will risk dealing with such a provision, and the note becomes in effect non-negotiable. Yet such a result is directly in the teeth of the act. Consistent with its provision,[5] a clause in an otherwise negotiable note which appears to be a statement of the transaction which gave rise to the instrument, should be conclusively presumed to be that, and nothing more, and should not be held to render the note non-negotiable. In other words, all doubt should be resolved in favor of negotiability.[6]

From this point of view may it not be said that the clause in the note in question was only a memorandum of what the note

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[1] (May 15, 1919; rehearing denied June 30, 1919) 82 So. 498 (Ala.)

[2] Cal. Civ. Code § 3084, Negotiable Instruments of Law, § 3, which provides as follows: "An unqualified order or promise to pay is unconditional within the meaning of this act, though coupled with :—2. A statement of the transaction which gives rise to the instrument."

[3] See Brannan, Negotiable Instruments Law (1st ed.) p. 44.

[4] Crawford, Annotated Negotiable Instruments Law (4th ed.) p. 18.

[5] As set forth, supra, n. 2.

[6] Cases like R. S. Howard Co. v. International Bank of St. Louis (1918) 200 S. W. 91 (Missouri) support this view. In this case there was a notation in a check, otherwise negotiable in form, as follows: ". . . to be used in part renewal of note due 6/21." The court held that this was simply a "statement of the transaction which gives rise to the instrument", and so did not destroy the negotiability of the check.

was given for? There is every reason to believe the parties themselves intended the note to be negotiable, for, in addition to the fact that it was an "order" note, the bank would naturally want an instrument which it could further negotiate and use the proceeds of to pay the certificate of deposit when it became due.

The fact that the instrument shows on its face that it was given for a consideration which is still executory does not render it non-negotiable. Our own case of Flood v. Petry[7] settled this point, stating the rule generally prevailing throughout the country.[8]

As for the use of the word "reimburse," it certainly is not desirable that the negotiability of instruments should turn upon a quibble over language. Moreover, why should it be held that the bank could only properly be "reimbursed" after it had paid out something? That it should not is clearly pointed out in the minority opinion: "Nor am I . . . . able to follow the argument which would make this promise to be conditional by reason of the use of the word 'reimburse' used in the so-called indorsement of the note; for, I take it, every promissory note, negotiable or non-negotiable, is given to reimburse somebody for something, it may be credit only."

It is submitted that decisions like Sacred Heart Church Building Committee v. Manson tend to produce doubt and uncertainty and are opposed to the spirit of the Negotiable Instruments Law. Is it going too far to suggest that courts should require nothing short of a positive condition in the very terms of the note to defeat its negotiability where it is otherwise fully negotiable in form? Surely this is not asking too much of the parties to the instrument, for if the maker intends to make a conditional promise he can easily do so, and in fact usually will speak definitely, either by promising "on condition that," or by using some other words which carry the same effect. *E. S*

CLAYTON ACT: INJUNCTIONS IN LABOR DISPUTES.—In the case of *Montgomery v. Pacific Electric Railroad Company*,[1] the employees of the railway had agreed to deal with the employer directly, and not through union agents. Nevertheless, aided by the defendants, eastern officials of the Brotherhood of Railway Engineers, the employees formed a division of the union and struck to have their

[7] (1909) 165 Cal. 309, 132 Pac. 256, 46 L. R. A. (N. S.) 861. A recent decision illustrates one limitation on this case, however. Spotten v. Dyer (Aug. 8, 1919) 29 Cal. App. Dec. 503, 184 Pac. 23. If the holder of a note knows that it is given as a future payment under a contract providing for certain acts to be performed as a condition precedent to payment, the note is non-negotiable.

[8] Siegel et al. v. Chicago Trust Co. and Savings Bank (1890) 131 Ill. 569, 23 N. E. 417. See also First National Bank v. Sullivan (1911) 66 Wash. 375, 119 Pac. 820, Ann. Cas. 1913C 930, which establishes the rule that if the note had been payable on demand, or at any time before a year, at which time the bank's certificate of deposit was due, the promise would not be conditional, for the maker would agree to pay before the bank could be called upon to meet the certificate of deposit.

[1] (May 26, 1919) 258 Fed. 382.